

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



OFFICE OF THE INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS
REPORT OF INVESTIGATION CONCERNING

CHRISTINE TODD WHITMAN
Administrator for the
U.S. Environmental Protection Agency
Case Number: 2002-0003

TABLE OF CONTENTS

Narrative
Prosecutive Status

Section A
Section B

Exhibits

Distribution:

Nikki L. Tinsley
Inspector General

Approvals:

/s/ Emmett D. Dashiell, Jr.
Acting Assistant Inspector General for Investigations

This report is the property of the Office of Investigations and is loaned to your agency: it and its contents may not be reproduced without written permission. The report is FOR OFFICIAL USE ONLY and its disclosure to unauthorized persons is prohibited. Public availability to be determined under 5 U.S.C. 552.

EPA Form 2720-17 (Computer)

SECTION A - NARRATIVE

PREDICATION

On January 16, 2002, the OIG commenced an investigation into whether Environmental Protection Agency (EPA) Administrator CHRISTINE TODD WHITMAN had violated 18 U.S.C. § 208(a) by taking official actions affecting a personal financial interest with respect to three environmental cleanup sites. The sites in question are the SHATTUCK CHEMICAL COMPANY Superfund Site in Denver, Colorado (SHATTUCK), the MARJOL BATTERY and EQUIPMENT COMPANY Superfund Site in Throop, Pennsylvania (MARJOL), and the WORLD TRADE CENTER Site in New York City, New York (WTC). Former EPA Ombudsman ROBERT MARTIN and EPA employee HUGH KAUFMAN alleged, on or about January 14, 2002, in published news media accounts, that Administrator WHITMAN had improperly participated in decisions affecting her personal financial interests arising from her husband's stock holdings in CITIGROUP Inc. (CITIGROUP). Specifically, with respect to the SHATTUCK Superfund Site and the MARJOL Superfund Site, MARTIN and KAUFMAN alleged, in substance, that Administrator WHITMAN participated in either remedy-selection decisions or settlement negotiation decisions that affected the liability of CITIGROUP. For the WTC Site, they alleged Administrator WHITMAN made misleading statements about the results of air monitoring tests conducted at the WTC Site and that such statements accrued to the benefit of TRAVELERS INSURANCE CORPORATION, a company owned by CITIGROUP, which allegedly faces liability relating to the terrorist attack on the WTC.

Section 208(a) of Title 18 generally prohibits government employees from personally participating in matters in which they have a financial interest. It provides, in pertinent part:

... [W]hoever, being an officer or employee of the executive branch of the United States Government . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, . . . has a financial interest -- Shall be subject to the penalties set forth in section 216 of this title.

INVESTIGATIVE SUMMARY

KEY EPA OFFICE OF GENERAL COUNSEL AND OFFICE OF GOVERNMENT ETHICS INTERVIEWS

On January 24, 2002, KENNETH WERNICK, Senior Counsel and Alternate Designated Agency Ethics Official, Ethics Office, Office of the General Counsel (OGC), EPA, was interviewed and provided the reporting agent with copies of information contained in Administrator WHITMAN's ethics file. A review of that file disclosed that the Administrator reported her husband's CITIGROUP stock on the

Standard Form 278, Executive Branch Personnel Public Financial Disclosure Report, dated January 19, 2001. WERNICK stated that before the Administrator assumed her position at EPA, the Office of Government Ethics (OGE) and the Senate reviewed her SF-278 and she was “given a clean bill of health.” The file review also disclosed that Administrator WHITMAN signed a recusal memorandum, dated February 1, 2001, for several companies for which the Administrator owned stock. CITIGROUP was not listed among those companies. WERNICK stated that the OGC did not prepare a (written) recusal for CITIGROUP on behalf of the Administrator because a recusal was not required if the Administrator took no official action. WERNICK stated that in June 2001, he received questions from the Administrator’s staff regarding the relationship between CITIGROUP and SHATTUCK. WERNICK asked the librarian to research the relationship between CITIGROUP and SHATTUCK, advised EILEEN MCGINNIS, Chief of Staff, Office of the Administrator, that CITIGROUP owned SHATTUCK, and told her that the Administrator should take no action with respect to CITIGROUP or SHATTUCK. (Exhibits 1 and 5)

On January 24, 2002, ANNA L. WOLGAST, Principal Deputy General Counsel and Designated Agency Ethics Official (DAEO), EPA/OGC, was interviewed and stated that she and DON NANTKES, former Alternate DAEO, EPA/OGC, provided the Administrator with a full ethics briefing and reviewed the ethics forms (SF-278), ethics agreement, and those interests belonging to the Administrator that presented a potential conflict of interest under 18 U.S.C. §208. The ethics briefing took place within the Administrator’s first ten days in office. WOLGAST stated that there was no discussion about SHATTUCK or CITIGROUP. WOLGAST stated she was not aware CITIGROUP owned SHATTUCK. WOLGAST stated that she, ROBERT FABRICANT, EPA General Counsel, and WERNICK talked about preparing a recusal for the Administrator for CITIGROUP after the Denver Post article [regarding the Administrator’s alleged conflict of interest with the SHATTUCK Superfund Site and CITIGROUP] was released. However, they determined that there was no need to prepare a recusal because FABRICANT verified that the Administrator had not participated in matters involving CITIGROUP or SHATTUCK, and he advised the Administrator not to participate in any matter involving CITIGROUP or SHATTUCK. WOLGAST stated that she consulted with NORMAN SMITH, Office of Government Ethics (OGE) and they (OGC and OGE) agreed not to do an entity-by-entity recusal because the Administrator had a large number of investments and a recusal had already been prepared for companies that had significant dealings with EPA. (Exhibit 2)

During a followup interview with WOLGAST on May 14, 2002, she stated that there is no specific law pertaining to recusals. WOLGAST advised that the OGE regulations state a person cannot participate personally or substantially in a matter in which they have a financial interest. WOLGAST stated that there is nothing requiring the issuance of a recusal and a recusal does not have to be in writing. She stated that OGC followed the law with respect to Administrator WHITMAN and, to the best of her knowledge, the Administrator did not participate in any matter in which she had a financial interest. WOLGAST stated that during Administrator WHITMAN’s ethics briefing, she and NANTKES spoke with her about the statutes and regulations pertaining to conflicts, provided her with examples of potential conflicts, and asked her to call if she had any questions. WOLGAST stated that the recusal letter prepared prior to the Administrator taking office (end of January 2001) was not required. The only requirement the Administrator has is that she does not participate in any decisions pertaining to her financial interest. WOLGAST identified those companies listed on the Administrator’s SF-278 that could have posed a potential conflict with pending enforcement actions at EPA and a recusal was prepared for those companies. WOLGAST stated that there was never any attempt to do a company by company recusal and there is no master list of pending enforcement actions. She identified those companies that she knew about at the time. WOLGAST stated

that as of January 2001, she did not know about CITIGROUP. (Exhibit 3)

WOLGAST stated that EILEEN MCGINNIS, Chief of Staff, Office of the Administrator, serves as the gatekeeper for Administrator WHITMAN. MCGINNIS has a copy of the Administrator's SF-278 and recusal letter and verifies that there are no conflicts of interest issues prior to scheduling meetings for the Administrator. MCGINNIS has contacted WOLGAST on issues that MCGINNIS was not sure about. WOLGAST stated that within that last six months, the Administrator issued a letter to her staff stating that any meeting pertaining to a Superfund Site must be cleared through MCGINNIS. This was done so that MCGINNIS could verify that there were no conflicts prior to a meeting taking place with the Administrator. (Exhibit 3)

On January 30, 2002, FABRICANT was interviewed and stated that after the conflict of interest allegations were publicized (more than four months prior), the Administrator requested that he determine what the ethics requirements were pertaining to CITIGROUP and asked him to make sure she complied with those requirements. FABRICANT stated that he did not have, nor did the Administrator request, information pertaining to the SHATTUCK settlement agreement. FABRICANT stated that he advised the Administrator that she should not participate in matters involving SHATTUCK. His advice was based on information provided by WERNICK, who conducted fact-finding on SHATTUCK, determined that CITIGROUP was a Potentially Responsible Party, and obtained information on CITIGROUP. FABRICANT stated that under the ethics standards, there was no specific requirement for a recusal on CITIGROUP. FABRICANT stated that, to his knowledge, Administrator WHITMAN complied with requirements issued by the OGE and the ethics laws themselves by not participating in matters pertaining to CITIGROUP and SHATTUCK. (Exhibit 4)

On February 27, 2002, DEBORAH BORTOT, Financial Analyst, OGE, was interviewed and stated that she had spoken with KAY RICHMAN, former Ethics Attorney, OGE, who reviewed and processed Administrator WHITMAN's SF-278 and ethics agreement on January 18, 2001. According to BORTOT, RICHMAN stated that she did not recall discussing CITIGROUP with anyone from EPA. RICHMAN stated that her notes were very thorough and, if there was a discussion about a recusal for CITIGROUP, the information would be written in the file. A review of RICHMAN's notes revealed no information or discussions pertaining to CITIGROUP. However, the notes contained a detailed discussion about the companies listed on the Administrator's SF-278 that presented a potential conflict of interest and those in which the Administrator would have to divest her interests. (Exhibit 5)

On May 15, 2002, KAY RICHMAN was interviewed and stated that she reviewed Administrator WHITMAN's financial disclosure form and ethics agreement for possible conflicts along with WOLGAST and NANTKES. RICHMAN thought that the review took place in early January 2001. She could not recall any discussions about CITIGROUP and stated that if there were a discussion, the information would be contained in the file. RICHMAN did not know that CITIGROUP had interests on which EPA was acting and she relied primarily on EPA to inform her about potential conflicts on matters appearing before EPA. (Exhibit 6)

RICHMAN stated that a recusal should be prepared for every company [listed on the individual's 278 form] that has business before the Agency, if that information is known at the time the financial disclosure form and the ethics agreement are prepared. These forms are prepared and submitted to the Senate prior to the person taking office and conflicts often arise after the person has taken office.

RICHMAN stated that the person who owns the assets should know when there is a potential conflict. (Exhibit 6)

RICHMAN stated that the purpose of OGE and OGC's review of the financial disclosure form and ethics agreement, which is essentially the recusal letter, is to identify potential conflicts prior to the person's confirmation hearing. Companies identified as a potential conflict are listed in the person's ethics agreement and the person has to sign the agreement stating that he or she will comply with the ethics laws and will not take any action pertaining to those companies. RICHMAN stated that a recusal does not have to be in writing and that the Administrator did not have to prepare a recusal for any company listed on her financial disclosure form. The Administrator has an obligation not to act in a particular matter in which she, her spouse, or dependents have a financial interest. RICHMAN advised that the law pertaining to a recusal is found in 18 U.S.C. §208. That law prohibits a person from participating in any matter that would have a direct and predicable effect on his/her own finances. RICHMAN stated that there is also an administrative rule found in 5 U.S.C. §2635.502 that provides more detail about situations that appear to be conflicts, but technically may not violate any laws. For example, RICHMAN stated that an employee should not take any action on an issue affecting the finances of the employee's family members or the company where her spouse is employed, if that action would cause a reasonable person to question the action taken. (Exhibit 6)

Before the Administrator assumed her position as EPA Administrator, the EPA's OGC, the OGE, and the Senate reviewed her SF-278 and found no conflicts of financial interest. A review of OGE's ethics file revealed that the Senate confirmed Governor WHITMAN as the Administrator for the EPA on January 30, 2001. Administrator WHITMAN signed her SF-278 and ethics agreement on January 19, 2001. Administrator WHITMAN's forms were also forwarded to the Senate for review on January 19, 2001, and no issues were raised by the Senate regarding a conflict of interest. (Exhibit 5)

SHATTUCK BACKGROUND AND KEY INTERVIEWS

The following history of the SHATTUCK site was obtained from EPA's Comprehensive Environmental Response, Compensation and Liability Act Information System (CERLIS); the site Consent Decree; and the Federal Register. The Denver Radium Superfund Site, Denver, Colorado, consists of eleven operable units (discrete areas of contamination) of radium contaminated soil and asphalt. Operable Unit 8, also known as the SHATTUCK Superfund Site, is a 10-acre industrial site of a former radioactive extraction facility owned and operated by the S.W. SHATTUCK CHEMICAL COMPANY, Inc. From the 1920's to 1984, the SHATTUCK property was used to treat and process molybdenum ores, radium slimes, and uranium compounds and ores. As a result of extensive mining and processing, radioactive contaminated soil is widely scattered throughout the site. The selected remedial action for this site includes demolishing and decontaminating buildings, tanks, and equipment onsite; treatment and/or excavation and offsite disposal of radium contaminated soil; and placing a cap over the stabilized material. The estimated cost for this remedial action is \$26 million.

A potentially responsible party (PRP) under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, SHATTUCK, the site owner/operator, is liable for environmental response actions. SHATTUCK performed response actions under a unilateral administrative order issued in 1992. In August 2000, EPA, the Department of Interior,

and the State of Colorado, in conjunction with the Department of Justice, began negotiations to resolve SHATTUCK's CERCLA liability for EPA's response costs and natural resource damages claims. The parties reached an agreement in principle in December 2000, and then engaged in the process of drafting a consent decree, concluded in November 2001.

On December 12, 2001, a proposed Consent Decree in United States V. The S.W. SHATTUCK CHEMICAL COMPANY, Inc., Civil Action No. 01-2404, was lodged in the United States District Court for the District of Colorado for an action filed [See 67 FR 2243, 2002 WL 50520 (F.R.)]. The action resolves SHATTUCK CERCLA liability for EPA's costs of responding to the release or threatened release of hazardous substances from Operable Unit 8, as well as natural resource damages. Under the terms of the decree, SHATTUCK will pay the United States \$5.45 million to offset EPA's response actions at the site, \$250,000 to the United States Department of Interior to settle natural resource damage claims, and will establish a trust for sale and distribution of net proceeds to EPA for the SHATTUCK property subject to an environmental cleanup. The Consent Decree was approved by the United States District Court for the District of Colorado and entered on March 4, 2002. (See also Exhibit 10.) According to RICHARD SISK, General Attorney, Legal Enforcement Program, Office of Enforcement, Compliance, and Environmental Justice (OECEJ), Region 8, SHATTUCK is wholly owned by PHIBRO RESOURCES CORPORATION, Inc., which in turn, is wholly owned by SALOMON SMITH BARNEY HOLDINGS, Inc. SALOMON SMITH BARNEY is owned by CITIGROUP Inc. (Exhibit 10)

The administrative file for SHATTUCK was reviewed by OIG agents and revealed no involvement by Administrator WHITMAN. The Administrator's office calendar was also reviewed by OIG agents and disclosed no meetings, briefings, or other information pertaining to SHATTUCK. (Exhibits 7 and 8)

On January 28, 2002, EILEEN MCGINNIS, Chief of Staff, Office of the Administrator, was interviewed and stated that neither she nor Administrator WHITMAN has been involved in any matter concerning SHATTUCK. MCGINNIS stated that to the best of her knowledge, the Administrator had no briefings regarding SHATTUCK and, to this day, the Administrator is unaware of the contents of the settlement. MCGINNIS stated that after the article was printed in the Denver Post, she and Administrator WHITMAN talked about the Administrator not being involved in matters pertaining to SHATTUCK and "how the story continued despite the truth." MCGINNIS stated that subsequent to the Denver Post article, she advised FABRICANT that the Administrator's husband owned stock in CITIGROUP and FABRICANT told her that the Administrator was not involved in matters pertaining to CITIGROUP or SHATTUCK. MCGINNIS stated that she was in charge of Administrator WHITMAN's schedule and that she serves as the "gate keeper" for the Administrator. When someone requests a meeting with the Administrator, that person has to go through MCGINNIS. She stated that she makes sure that the subject and the requesting party's name have been included on the Administrator's calendar. MCGINNIS stated that she keeps Administrator WHITMAN's SF-278 in her desk drawer and when meetings were requested, she reviewed the Administrator's ethics form and made sure there were no conflicts. (Exhibit 9)

On February 4 and 5, 2002, the following individuals were interviewed at EPA, Region 8, in Denver, Colorado: (1) SISK; (2) JACK MCGRAW, Deputy Regional Administrator, EPA; (3) JAMES HANLEY, Environmental Engineer, Superfund Remediation Program, Office of Ecosystems Protection and Remediation (OEPR); (4) MAX DODSON, Assistant Regional Administrator, OEPR; (5) CAROL RUSHIN, Assistant Regional Administrator, OECEJ; (6) MICHAEL RISNER, Director, Federal Enforcement Program, OECEJ; and (7) JEREL ELLINGTON, Senior Counsel, Environmental

Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice (DOJ). The individuals listed above confirmed that Administrator WHITMAN was not now and had never been involved with SHATTUCK and that the terms of the agreement were in place prior to the Administrator taking office. Collectively, they provided the following additional information. In August 2000, EPA started negotiations with SHATTUCK. In early November 2000, the last major negotiation with SHATTUCK had been resolved and on December 12, 2000, EPA had a best offer and an Agreement in Principle. The individuals listed above advised that the terms of the settlement agreement were in place, including the \$7.2 million total settlement amount and the liability (the risk that EPA would assume) allowed, before the Administrator assumed her position at EPA on January 30, 2001. The settlement amount was based on SHATTUCK's avoided costs or what it would cost SHATTUCK to maintain the Site in place. The remedy was to cost between \$25 and \$35 million. The above individuals advised that on January 1, 2001, EPA and the U.S. Department of Interior started developing the Consent Decree (CD) and the first draft was sent to DOJ in January 2001. On February 1, 2001, the draft CD was sent to SHATTUCK's attorney. The only issue that changed from the Agreement in Principle to the final CD was the disposition of the property. It was further advised that in March or April 2001, the State submitted language for the CD and in September 2001, the final CD was prepared. The CD was finalized in November 2001. On December 12, 2001, the CD was filed with the U.S. District Court for the District of Colorado. The individuals listed above advised that DOJ published the information in the Federal Register, and the public had 45 days to comment to DOJ on the CD. Depending on the nature of the comments, DOJ could ask the Court to accept the CD in its present form or incorporate some of the comments. The public comment period ended on March 4, 2002. The CD was signed by SISK; Barry BREEN, Director, Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance (OECA); RUSHIN; and ELLINGTON, for EPA; an official of SHATTUCK; and State and Interior representatives. (Exhibits 10, 11, 12, 13, 14, 15, and 16).

On March 16, 2001, SISK sent an email to MIKE GAYDOS, Supervisory Environmental Protection Specialist, Region 9, OECEJ, stating that he and BARRY LEVENE, Supervisory Environmental Protection Specialist, Superfund Remedial Response Program, Region 8, was working on a briefing paper on SHATTUCK for Administrator WHITMAN. The email contained an attachment that was prepared for Administrator WHITMAN which included one page of information about the Denver Post article and the history of the Site. There was no discussion about the terms of the agreement with SHATTUCK. The email also said "the information was given to DODSON to decide if it went on to the Administrator." The Administrator stated that she did not remember receiving any details or briefing papers regarding SHATTUCK prior to her visit to Region 8. (Exhibits 7 and 18).

MCGRW said that he spoke with the Administrator about SHATTUCK during her regional visit in February or March 2001, for approximately five to ten minutes. MCGRW stated that he told the Administrator about the issues associated with the site that might have been of concern to the Administrator such as the latest news about SHATTUCK as conveyed by the press. MCGRW stated that there was no discussion about the settlement or negotiations and Administrator WHITMAN did not ask any questions. MCGRW stated that Administrator WHITMAN did not direct him or anyone else to take actions pertaining to SHATTUCK. He stated that the decision making authority for settlement agreements has been delegated down four levels. MCGRW stated that when Administrator WHITMAN took office, negotiations had already been completed, so there was nothing or no one for the Administrator to direct. (Exhibit 11)

On February 11, 2002, an attorney for SHATTUCK was interviewed and stated that the attorney was never contacted by the Administrator or her husband. The attorney has been involved with SHATTUCK since 1992 and has never seen or heard from the Administrator and had no knowledge of any involvement by the Administrator with settlement negotiations. (Exhibit 17)

On March 18, 2002, CHRISTINE TODD WHITMAN, EPA Administrator, was interviewed and stated that she became aware of her alleged conflict of interest from press reports. Administrator WHITMAN stated that she does not have a financial conflict of interest pertaining to CITIGROUP or any other company. She stated that she has divested all financial interests except her husband's business. The Administrator stated that she does not get involved in anything that would constitute a conflict of interest and she has recused herself from all such matters. Administrator WHITMAN stated that she was not informed about the settlement negotiations or the final resolutions of the SHATTUCK Superfund Site. However, JACK MCGRAW, Acting Regional Administrator, Region 8, briefed her about SHATTUCK, but only to the extent that it was identified to her as a Superfund site. She was also advised by the Ombudsman's office of some issues concerning SHATTUCK. Administrator WHITMAN stated that she has not participated in or taken any action pertaining to SHATTUCK; she had no involvement in the resolution of the site; she does not remember receiving any details or briefing papers regarding SHATTUCK prior to her visit to the regional office; and she did not direct anyone to take any action pertaining to SHATTUCK. (Exhibit 18)

Administrator WHITMAN stated that she spoke with FABRICANT about SHATTUCK and her husband's interest in CITIGROUP. She could not recall the date of her conversation with FABRICANT. FABRICANT advised her not to become involved in the SHATTUCK settlement. FABRICANT told the Administrator that she did not need to prepare a letter of recusal each time an issue came up within EPA that might lead to a potential conflict of interest. The Administrator did not have a written record of the advice provided by FABRICANT. The Administrator also stated that there was no discussion concerning CITIGROUP or a possible conflict of interest during her ethics briefing. (Exhibit 18)

MARJOL BACKGROUND AND KEY INTERVIEWS

The MARJOL BATTERY Site, located in Throop, Pennsylvania, is owned by GOULD ELECTRONICS. Lead soil contamination resulted from battery recycling operations at the site by the former MARJOL BATTERY and EQUIPMENT COMPANY between 1963 to 1981. In 1988, Gould conducted a removal action, taking away lead contaminated soil from off-site properties. In 1999, EPA proposed a cleanup plan consisting of excavation and off-site disposal of contaminated soil and battery casings, and placement of a soil cap over another area of contaminated material. In December 2000, EPA proposed a final remedy, which consists of a combination of excavation, waste treatment via solidification/stabilization, potential off-site disposal, capping, and institutional controls to maintain the protectiveness of the remedy. The estimated cost of the final remedy is between \$14 million and \$24 million. In a preliminary report dated October 10, 2001, EPA Solid and Hazardous Waste Ombudsman criticized the final remedy by stating that it was insufficient and incomplete in its characterization of the site and that insufficient attention was given to the risk of mine fire and subsidence. (Exhibit 21)

The financial connection between GOULD and CITIGROUP is attenuated. According to an EE TIMES news article dated January 3, 2001, GOULD was acquired by AMERICAN MICROSYSTEMS

Inc. (AMI) in 1982, which in 1988 was acquired by GA-TEK. GA-TEK is owned by JAPAN ENERGY CORPORATION (JEC), which sold 80 percent of its controlling interest in AMI to CITICORP and Francisco Partners.

MCGINNIS stated that, to her knowledge, the Administrator had no involvement with the MARJOL BATTERY site or negotiations. The Administrator's office calendar was also reviewed by OIG agents and disclosed no meetings, briefings, or other information pertaining to MARJOL. (Exhibit 8). MCGINNIS did, however, recall that Senator ARLEN SPECTER (R-PA) might have contacted the Administrator about the site, but MCGINNIS stated she was not positive about the conversation. (Exhibit 9)

On February 22, 2002, the following interviews were conducted in Philadelphia, Pennsylvania: (1) THOMAS VOLTAGGIO, Deputy Regional Administrator, Region 3, EPA; (2) PAUL GOTTHOLD, Chief, Pennsylvania Operations, Waste and Chemical Management Division, EPA; and (3) YVETTE HAMILTON, Senior Assistant Regional Counsel, Region 3, EPA. The individuals listed above advised that the decisions regarding the cleanup of MARJOL were made before Administrator WHITMAN assumed her position. They stated that the Administrator was not involved with MARJOL and that she did not have signature authority for this matter. The Record of Decisions (ROD) was signed by BRADLEY CAMPBELL, former Regional Administrator, Region 3 EPA. The individuals listed above advised that five days after the final remedy was announced on December 1, 2000, Senator SPECTER and Congressman DAN SHERWOOD (R-PA) wanted the remedy withdrawn because the Ombudsman had not completed his report. The above individuals stated that CAMPBELL signed the ROD and agreed to suspend implementation until March 31, 2001. Documents provided by the Region 3 officials revealed no involvement by the Administrator in the MARJOL site. (Exhibits 19, 20, and 21)

The Ombudsman's Preliminary Report on the MARJOL Superfund Site primarily discusses (1) Hugh Kaufman's removal from the position of "Chief Investigator for the National Ombudsman"; (2) the need for more independence in the Ombudsman's office; (3) the history of the site; (4) EPA making a decision on the resolution of the site while the Ombudsman was investigating MARJOL; and (5) the concerns expressed by the citizens of Throop, Pennsylvania. (Exhibit 20)

VOLTAGGIO further advised that he met with Administrator WHITMAN on March 5, 2001. Administrator WHITMAN told him that Senators SPECTER and RICK SANTORUM (R-PA) wanted to meet with her regarding MARJOL as it related to the Ombudsman's job at EPA. VOLTAGGIO stated that he told her about the history of MARJOL and that a final report was expected from the Ombudsman on March 31, 2001. VOLTAGGIO stated that the Administrator never directed him to take any action pertaining to MARJOL, never made decisions pertaining to the site, and never attended any meetings regarding MARJOL. VOLTAGGIO stated that the connection between MARJOL and CITIGROUP never existed and was never discussed. (Exhibit 19)

Administrator WHITMAN stated that she was not informed about settlement negotiations or the final resolution of the MARJOL SITE. She stated that she had no involvement in the resolution of MARJOL, she did not participate in, take any action, or direct anyone to take action pertaining to MARJOL. Administrator WHITMAN advised that she had some "informal" discussions with VOLTAGGIO, but the briefing did not include information about the settlement or negotiations. The Administrator stated that she told VOLTAGGIO to take appropriate action to alleviate the citizen's

concerns without setting any precedents not justified by science. (Exhibit 18)

WORLD TRADE CENTER INFORMATION

On September 13, 2001, Administrator WHITMAN commented on the air quality around the WTC site, stating, "The outdoor air or ambient air was fine." [The investigating agents did not attempt to determine whether the testing and monitoring conducted by EPA at the WTC site were performed accurately. The investigating agents wanted to determine whether Administrator WHITMAN made statements about the indoor and outdoor air pollution created by the WTC attack and, if so, determine on what information her comments were based]. In published news media accounts, HUGH KAUFMAN, EPA employee, alleged that the Administrator's comments about the air quality around the WTC disaster site were beneficial to TRAVELERS INSURANCE CORPORATION, which is owned by CITIGROUP.

MCGINNIS stated that the Administrator said "the outdoor air was clean." MCGINNIS stated that the Administrator's comments were based on tests conducted by EPA and the State of New York. MCGINNIS stated that comprehensive monitoring was done at the Site for asbestos and other harmful elements. MCGINNIS provided an EPA Headquarters Press Release that discusses the Administrator's comments about the air and the results of studies conducted by EPA. In the press release dated October 3, 2001, Administrator WHITMAN stated that "Our data show that contaminant levels are low or nonexistent, and are generally confined to the Trade Center site. There is no need for concern among the general public, but residents and business owners should follow recommended procedures for cleaning up homes and businesses if dust has entered." The press release states that 835 ambient air samples were taken in the New York City and metropolitan area by EPA and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), and have found no evidence of any significant public health hazard to residents, visitors or workers beyond the immediate WTC area. (Exhibit 9)

Administrator WHITMAN advised that she did make statements concerning the air quality around the WTC disaster site. She stated that "the outdoor air or ambient air was fine." This comment was made based on studies conducted by EPA. The Administrator advised that initially, air quality testing detected "hits" for asbestos and other materials. Clean up was performed and it was recommended that the clean up be done by professional clean up services using High Efficiency Particulate Arresting (HEPA) filters. She stated that there were ongoing discussions regarding the air quality with Region 2, and she attempted to keep the public informed with up-to-date information. The Administrator's comments concerning the air quality were based upon the most current test data available by EPA. The test data indicated that there would be no long-term health effects; however, EPA decided that workers needed to wear appropriate protective equipment due to the risk of immediate exposure while working with possibly contaminated material. Administrator WHITMAN stated that her comments regarding the air quality were based upon the need to ensure the public safety and not because of any insurance related issues. She advised that she did not know how her comments about the air quality could have benefitted CITIGROUP or the TRAVELERS INSURANCE COMPANY. (Exhibit 18)

On April 8 and 9, 2002, KATHLEEN CALLAHAN, Director, Environmental Planning and Protection, Region 2, EPA, and WILLIAM MUSZYNSKI, Deputy Regional Administrator Region 2, EPA, were interviewed. Both CALLAHAN and MUSZYNSKI stated that the Administrator's comments about the air quality were made based on information the two of them provided during their daily conference

calls with the Administrator. MUSZYNSKI stated that he provided Administrator WHITMAN with verbal updates and faxed her "one pagers" describing the latest air monitoring data as it came in from the field. (Exhibits 22 and 23)

During the Administrator's interview, she stated that HEPA filters (vacuum trucks) were used to perform the cleanup around the WTC. To verify the accuracy of the statement, the investigating agent interviewed key EPA Region 2 personnel involved with the WTC site. The investigators also reviewed EPA Headquarters Press Releases in which the Administrator stated, on September 13, 2001, "EPA is greatly relieved to have learned that there appears to be no significant levels of asbestos dust in the air in New York City." On September 14, 2001, EPA announced, "The good news continues to be that the air samples we have taken have all been at levels that cause us no concern." On September 21, 2001, Administrator WHITMAN stated that "EPA has continued to use its 10 High Efficiency Particulate Arresting filter vacuum trucks, in areas where dust samples show any elevated levels of asbestos." (Exhibits 24, 25, 26, and 27)

On April 8, 2002, DAN HARKAY, Environmental Scientist, Removal Action Branch, Emergency and Remedial Response Division, Region 2, EPA, was interviewed and stated that the WTC cleanup started on September 14, 2001. The cleanup crew worked in the financial district from September 14 through September 16, 2001, cleaning the dust off the streets and sidewalks. HARKAY stated that no work was performed on September 17 and 18, 2001. The contractors then moved to Battery Park City and started cleaning that area on either Wednesday or Thursday (September 19, or 20, 2001). During this time, HARKAY stated that he had a casual conversation with a high level official of ADLER Companies, a subcontractor working onsite, when he was informed that the trucks used to do the cleaning did not contain HEPA filters. After the conversation with the ADLER official, HARKAY stated that he notified the primary contractor onsite (EARTH TECHNOLOGY INC.) and informed them that they were not in compliance with the contract. HARKAY stated that the work order specified the use of HEPA filter vacuum trucks. HARKAY stated that the HEPA equipment was brought in five days later on either September 24 or 25, 2001. HARKAY stated that he made a decision to continue using the trucks that were already on-site until the HEPA equipment was received. HARKAY stated he did not notify management because he had taken care of the problem. (Exhibit 28)

HARKAY said that it was "around the first week in October 2001," when his managers learned from someone (name unknown) in EPA Region 2's Press Office that HEPA filter vacuum trucks had not been utilized during the first five days of the WTC cleanup. HARKAY stated that Region 2's press person, whose name he could not remember, was preparing a summary report describing the process used to clean the dust off the streets. HARKAY was asked if he would review the report which talked about the use of HEPA vacuum trucks being used to do the cleaning. HARKAY stated that he then informed the press person that HEPA filter vacuum trucks were not utilized during the first five days of the WTC cleanup. The press person then notified CALLAHAN and informed her that HEPA equipment was not utilized during the initial cleanup. HARKAY stated that CALLAHAN contacted him about the matter and told him to "redo" the areas that were not cleaned with HEPA filter vacuum trucks. He stated that the areas previously cleaned, were not "redone" until the second or third week in October 2001. (Exhibit 28)

CALLAHAN and MUSZYNSKI confirmed that it was approximately three to four weeks after the WTC attack before they found out that HEPA filter vacuum trucks were not utilized during the initial cleanup. CALLAHAN found out about the issue with the HEPA filters from the press office and

MUSZYNSKI found out from reading a "201" (internal) report. CALLAHAN and MUSZYNSKI stated that the Administrator's comments about the air quality and the use of HEPA filter vacuum trucks were made based on information the two of them provided during their daily conference calls with the Administrator. MUSZYNSKI stated that he did not inform the Administrator that HEPA equipment was not utilized during the initial cleanup because the situation had been addressed. (Exhibits 22 and 23)

U.S. DEPARTMENT OF JUSTICE INVOLVEMENT

This investigation was worked in close coordination with DOJ's Public Integrity Section. On February 28, 2002, OIG agents attempted to interview one of the potential witnesses, HUGH KAUFMAN, to obtain evidence and additional facts about the investigation. On March 1, 2002, KAUFMAN sent a letter to CHRISTINE TODD WHITMAN and NIKKI L. TINSLEY, Inspector General, stating that OIG agents could have potentially violated Judge RICHARD W. ROBERTS Temporary Restraining Order by attempting to contact him.

On March 6, 2002, NOEL HILLMAN, Principal Deputy Chief, Public Integrity Section, DOJ, wrote KAUFMAN a letter advising him that based on comments that he made in the press, he was a potential witness in OIG's investigation of an alleged conflict of interest violation involving the EPA Administrator. HILLMAN requested that KAUFMAN provide any and all documents or other information in his possession to the investigating agents or DOJ and that he schedule an interview with the agents and/or DOJ. On March 7, 2002, KAUFMAN responded to HILLMAN's letter and stated, "I look forward to providing the Criminal Division of the Department of Justice and the FBI the information they need to prosecute WHITMAN." In response to KAUFMAN's claims, HILLMAN decided that he would contact the FBI and ask them to conduct an interview with KAUFMAN to see if there was any support for his claims. (Exhibits 29, 30, and 31)

SECTION B -PROSECUTIVE STATUS

HILLMAN reported to us that the FBI reported its results to him and after his office reviewed that evidence, they concluded that no further investigation was warranted. (Exhibit 32) On July 10, 2002, the DOJ Public Integrity Section declined criminal prosecution of this matter. (Exhibit 33)

The evidence indicates that the decisions pertaining to the SHATTUCK and MARJOL BATTERY sites were made in December of 2000 by EPA regional personnel. Administrator WHITMAN did not sign any document, make any decisions or recommendations, direct anyone to take any action, or participate in any matter involving the SHATTUCK or MARJOL sites. However, the Administrator was briefed on the history of the above sites and told about allegations made in the press. The investigation did not disclose any meetings or briefings on the terms of settlement negotiations that all took place prior to Administrator WHITMAN's taking office. The investigation also disclosed that Administrator WHITMAN's comments about the WTC were made based on information provided to her by EPA officials in Region 2. Accordingly, the allegations were not substantiated, criminal prosecution was declined, and thus, no further investigation is warranted in this matter.

